

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.4919 OF 1989

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

MRS. ANNAPURNA CHUNILAL MEHTA & ORS.

VERSUS

JOINT CHARITY COMMISSIONER & ORS.

Appearance:

MR DD VYAS for petitioner

MR VM PANCHOLI for respondent No.1

MR RN SHAH for respondent No.3

None present for respondent No.2

Coram: MR.JUSTICE S.K. Keshote,J

Date of decision: 16/06/2000

C.A.V. JUDGMENT

#. Challenge has been made in this writ petition under Article 226 of the Constitution of India by petitioners to the order dated 29th June 1989 of the Joint Charity Commissioner, Baroda Division, Baroda, under which the application filed by the President of the Trust Raniparaj Seva Samaj Trust and respondent No.2 came to be rejected as withdrawn.

#. The facts of the case are that Raniparaj Sewa Samaj Trust is a public trust registered under the provisions of the Bombay Public Trust Act. The respondent No.2 is also a registered public trust. In the Raniparaj Sewa Samaj Trust as per the registration, there were five trustees, i.e. the petitioners, Jugatram Dave and Mavjibhai C. Chaudhari. Jugatram Dave has expired. The respondent No.3 Madhavbhai Dhuriabhai Chaudhary is the President of the committee of Raniparaj Sewa Samaj Trust. Raniparaj Sewa Samaj Trust was constituted for administration in a predominantly adivasi area with the object of upliftment of economic, social and educational standards of the adivasis and persons of the lower strata of the society. The said trust was running Bal Wadis, Chhatralayas for girls, Ashram Shalas and Uttar Buniyadi Ashram Shalas. Since the activities of the trust had expanded to a great extent, it was not possible to handle the same efficiently and therefore, under the scheme of decentralization, the activities were transferred to Khadi Kutir, Vedchi, the respondent No.2, a public trust, of which the trustees are renowned adivasi leaders who have spend their whole life for upliftment of adivasis and were also doing the work for economic, social and educational upliftment of adivasis and persons belonging to lower strata of the society. As per the decision of decentralization, it was decided by the trust aforesaid that 13 Bal Wadis, 2 Chhatralayas of girls, 4 Ashram Shalas and 2 Utar Buniyadi Ashram Shalas were handed over to the respondent No.2 - Khadi Kutir Trust under the different orders of the Government and the above institutions were transferred to the respondent No.2-Trust. The possession of the property has been handed over to respondent No.2 and the respondent No.2 is also being paid by the State Government, grants for the aforesaid institutions since 1981-82. Though the transfer of the property has been made but a formal approval thereof was necessary to be obtained from the Charity Commissioner under Section 36 of the Bombay Public Trusts Act. Accordingly, a formal application was made before the Joint Charity Commissioner being Application No.36/23/88 purported to be u/s.36 of the Act aforesaid. This application was a joint application, i.e. by the Raniparaj Sewa Samaj Trust and the

respondent No.2. It is say of petitioners that both the trusts were doing exemplary work for the upliftment of economic, social and educational standard of adivasis and the persons belonging to lower strata of the society because of which it had created a good impression and influence over the persons of the adivasi community in Surat District. The petitioners stated that in view of fractions in the political party of Congress(I), one group headed by Shri Amarsinhbhai Chaudhary, the then Chief Minister of Gujarat State and the other group of persons who did not like the political interference in the social work as aforesaid, a situation has been created whereby it has caused serious danger to the aforesaid noble activities, affecting the economic, social and educational upliftment of the adivasis. It is the grievance of the petitioners that though the application aforesaid has been made before the Joint Charity Commissioner jointly by the two trusts u/s.36 of the Act, but because of subsequent political development an illegal meeting was held of the Raniparaj Sewa Samaj Trust on 6th May 1989 in order to affect the aforesaid activities. The respondent No.2 filed Regular Civil Suit No.69 of 1989 in the court of Civil Judge (S.D.), Bardoli, praying therein for quashing and setting aside the proceedings of the meeting aforesaid of the Trust. In the suit, an application ex.5 was also came to be filed for grant of temporary injunction and the learned trial court has granted temporary injunction in favour of the plaintiff therein, the respondent No.2 herein and ultimately that exparte injunction was made absolute after hearing all the parties. The respondent No.3 filed an application on 8th June 1989 before the Joint Charity Commissioner praying therein for withdrawal of the joint application made by the two trusts u/s.36 of the Bombay Public Trust Act. The petitioners, on 15th June, 1989, filed application before the Joint Charity Commissioner pointing out therein that the civil court has passed the order against the meeting dated 6th May 1989, and that the said order is continuing as such, no decision may be given on this application filed by respondent No.3 for withdrawal of the application. In substance, it has been stated and objected that so long as the civil court has not finally adjudicated in the matter, re.: validity of the meeting of the trust held on 6th May 1989, the application filed by respondent No.3 may not be decided. The objections raised by petitioners were not found favour with the Joint Charity Commissioner and the authority, under its order impugned, allowed the application filed by respondent No.3 and ordered for dismissal of the application filed earlier as withdrawn.

#. This special civil application is contested only by respondent No.3. He filed reply to the special civil application. There are two replies of respondent No.3 on the record. If we go by the contents of both the replies, I find that basically same objections were raised therein.

#. Mr.D.D.Vyas, learned counsel for petitioners contended that once the management, control and working of the 13 institutions of Raniparaj Sewa Samaj Trust were transferred to respondent No.2, rightly the respective properties are also to be transferred to respondent No.2. In fact, the possession of properties were handed over to the respondent No.2 but a formal approval thereof, i.e. of transfer as to be taken from the Joint Charity Commissioner and accordingly, an application has been made. In his submission, as there was a political fraction in the Trust and one set of this group was supporter of the then Hon'ble Chief Minister Shri Amarsinh Chaudhary, Shri Amarsinh Chaudhary asserting his influence has made it difficult for respondent No.2 to carry on its these activities. Mr.Vyas submits that it is really shocking and logically otherwise seems to be nothing but only a political scoring of the matters. Once Raniparaj Sewa Samaj Trust has taken decision to transfer the management, control and working of 13 institutions to respondent No.2 with prior sanction of the State Government, the State Government has started to give grant for these 13 institutions to the respondent No.2 and the property of the trust have also been handed over, without those orders of the State Government having been cancelled the management, control and working of these 13 institutions could be reverted back to Raniparaj Sewa Samaj Trust and how far it is justified even if some change has been made in the trustees of the trust in its meeting of 6th May 1989, this application could have been withdrawn before the Joint Charity Commissioner. Mr. Vyas submits that the Joint Charity Commissioner, under the total influence and direction of or to please the then Hon'ble Chief Minister of the State of Gujarat, has passed this order. It has next been contended that leaving apart whether the civil court has jurisdiction to go on and examine the validity, propriety and correctness of the Resolution of the Raniparaj Sewa Samaj Trust taken in the meeting of 6th May 1989, once the suit has been filed and interim order granted therein continues, the Joint Charity Commissioner has no jurisdiction to permit the application to be withdrawn by respondent No.3. In fact, what Mr.Vyas contends that the order passed by the Joint Charity Commissioner amounts to committing contempt of the order of the civil court. If in his view, the

civil court has no jurisdiction to entertain the suit then proper course would have been for this officer to approach the civil court and take necessary clarification and not the way in which he proceeded. The very fact that he has intentionally ignored the civil court's order and acted in violation of that order, inference can be drawn that it is nothing but only an act of this officer to please the then Hon'ble Chief Minister. Lastly, it is contended that the Joint Charity Commissioner can not sit over the decision of the civil court. If the new trustees have to act in hot haste for the reasons best known to them, then they could have also approached the civil court for modification of interim relief granted in the suit filed by respondent No.2. Summing up his submission, Mr.Vyas contends that otherwise also, without notice, the respondent No.2 who was also one of the signatories to that application filed u/s.36 of the Act, the Charity Commissioner could not have unilaterally permitted the respondent No.3 to withdraw this application.

#. Mr.R.N.Shah, learned counsel for respondent No.3 vehemently contended that the civil court has no jurisdiction to entertain the suit and the Joint Charity Commissioner, was perfectly legal and justified in his approach. It has next been contended that in the Trust meeting held on 6th May, 1989, new trustees were taken and a decision has also been taken to withdraw the application filed u/s.36 of the Bombay Public Trust Act. Once the trustees have considered it to be an application detrimental to the interest of trust which has all the right to resolve to withdraw the same more so, when it is not finally decided by the Joint Charity Commissioner. It is further contended that so far as the contention regarding malafides of the then Hon'ble Chief Minister of the State is concerned, it may not be gone into as Shri Amarsinh Chaudhary is not a party to this special civil application. Regarding grievance of Mr.Vyas made to give a notice to respondent No.2 before passing of this order impugned in the special civil application by the Joint Charity Commissioner, Mr.Shah submits that this grievance could have been made by respondent No.2 but it is not made. The petitioners are not trustees of respondent No.3 nor they have any interest in the trust and as such they cannot raise such objection. On merits of the matter, a preliminary objection has also been raised by Mr.Shah that this special civil application is not maintainable as against the impugned order of the Joint Charity Commissioner, the petitioners have alternative remedy of appeal. Concluding the submissions, Mr.Shah submits that the petitioners are no more trustees of the

Trust concerned and they have no locus standi to file this special civil application. It is the submission of Mr.Shah that even the petitioners are not the party to the suit of which reference has been made. In fact this petition has been filed by petitioners at the instance of respondent No.2 and not for their own grievance. The petitioners have not challenged the Resolution dated 6th May 1989 and as such their locus standi is not there to challenge this order of Joint Charity Commissioner. Merely because this application has been filed by respondent No.3, it will not give any cause to them to file this special civil application. Summing up his submissions, Mr.Shah submits that the petitioners have failed to show how the application filed by respondent No.3 for withdrawal of the application filed earlier for transfer of properties to respondent No.2 is detrimental to the interest of the trust. Even if it is taken that the petitioners are beneficiaries of the trust unless they are able to satisfy the court that the order passed by the Charity Commissioner is detrimental to the interest of the trust, they cannot approach to this court.

#. Mr.Pancholi, learned counsel for respondent-State, on being asked by the court, fairly submits that the manner in which the Joint Charity Commissioner approached in the matter is wholly unknown to our judiciary system. He is not supporting the order where the Joint Charity Commissioner has held that the civil court has no jurisdiction in the matter. In his submission, even if it is taken that the civil court has no jurisdiction, proper course would have been for this authority to approach the civil court for taking decision thereon rather than to ignore those orders of the civil court.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. I find sufficient merits in the contention of the learned counsel for respondent No.3 that in the absence of Shri Amarsinh Chaudhary as respondent in this special civil application, the allegations of malafides made and arguments raised by Mr.Vyas cannot be accepted. It is no more res-integra that the courts cannot go on and examine the allegations of malafides against an officer or a person holding office, unless that person has been impleaded as a party. So in the absence of Shri Amarsinh Chaudhary as respondent in this special civil application, the contentions raised by Mr.Vyas, re.: fraction of political parties and influence by Shri Amarsinh Chaudhary upon the Joint Charity Commissioner to

pass the order and some other ancillary contentions cannot be entertained.

#. I find sufficient merits in the contention of Mr.Shah that the respondent No.2 is the real person who could have raised objection but he has not filed any special civil application. Though suit has been filed by respondent No.2 but it has not objected the application filed by respondent No.3 for withdrawal of the joint application submitted under section 36 of the Act. I find sufficient justification in the contention of Mr.Shah that this writ petition has been filed by petitioners for espousing the cause of respondent No.2. The really affected party is the registered public trust and if it has any grievance against the order passed by Joint Charity Commissioner, then it has to be challenged by it and not by petitioners. I find sufficient merits in the contention of Mr.Shah also that the action of respondent No.3 to apply for withdrawal of application and order passed by the Jt. Commissioner cannot be said to be detrimental to the interest of the trust. The petitioners are not the trustees as they have not challenged the resolution of the trust dated 6th May 1989. They are not the plaintiffs in the suit. Even if injunction has been granted in the facts of the case, how far it is justified for the petitioners to approach this court. If the petitioners could not manage to continue as trustees they made this court to be a platform for scoring their political rivalries or political disputes in the matter. They may have many disputes against the then Hon'ble Chief Minister Shri Amarsinh Chaudhary but the court cannot be a stage where they have to score their these disputes. Be that as it may, otherwise also, even if the petitioners are taken to be the beneficiaries of the trust by the order of the Joint Charity Commissioner, it is difficult to say that it is detrimental to the interest of the trust. It is true that the trust has transferred some institutions to respondent No.2 with the approval of the State Government but it is a decision between the trust and respondent No.2 and once the petitioners have been ousted from the trusteeship of the trust, there cannot be any justification in their action to file this special civil application. However, even if the order is accepted to be illegal, still this court under Article 226 of the Constitution is not under an obligation, constitutional or legal, to set it aside. It is true that the approach of the Joint Charity Commissioner in this matter is not befitting to his office. Whether the civil court has jurisdiction or not is not the point to be decided here in this special civil application. Even if it is

assumed, presumed and accepted for the sake of arguments of respondent that the civil court has no jurisdiction in the matter, still appropriate course should have been for the Joint Charity Commissioner to approach the civil court in the civil side. Commenting upon the order passed by the civil court and to the extent to go even to flout the order of the civil court, possibly it is a matter where this officer could have been booked by this court for contempt of the court's order but the matter has to be examined with reference to the right, legal or fundamental of the petitioners in this case. As said earlier, none of the petitioners' fundamental and legal rights are being infringed. In fact, by the order of Joint Charity Commissioner impugned in the special civil application, the trust is also not put to suffer any loss. The petitioners are beneficiaries of trust they may have some semblance of justification where by this order, interest of the trust is likely to be jeopardized or it is detrimental to it, to approach to this court. That is not the case here. It is a clear case where the petitioners have filed this writ petition for respondent No.2. It seems that the petitioners are the persons who were politically against the then Hon'ble Chief Minister Shri Amarsinh Chaudhary and they now want to score their political grievances by this writ petition. They have interest in respondent No.2 but they are not admittedly the trustees of respondent No.2 also. The respondent No.2, being a public trust can take care of its own rights, liabilities, etc. for which, the petitioners have not locus standi to file this special civil application. I find sufficient merits in the contention of Mr.Shah that the petitioners have no locus standi to come up before this court against the impugned order. Merely because the Joint Charity Commissioner, to certain extent may not be justified to proceed in the manner in which he has proceeded, in view of the fact that ultimately by this order, the petitioners are not going to suffer any loss nor by this order any prejudice is caused to them, and more so this matter is between two trusts one of which the petitioners at one point of time were trustees, this writ petitioner at their instance cannot be entertained. The contention raised by Mr.Shah re.: maintainability of the special civil application needs not be gone into and decided.

##. The result of the aforesaid discussion is that this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by the court stands vacated. No order as to costs.

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(sunil)